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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 JULIE W.,

9 Plaintiff,

CASE NO. C18-5558-BAT

10 v.

**ORDER AFFIRMING THE  
COMMISSIONER AND DISMISSING  
THE CASE**

11 COMMISSIONER OF SOCIAL SECURITY,

12 Defendant.

13 Plaintiff Julie W. seeks review of the denial of her application for Supplemental Security  
14 Income and Disability Insurance Benefits. She contends the ALJ erred in evaluating the medical  
15 evidence and her testimony, and that the resulting residual functional capacity finding and  
16 finding of nondisability are thus erroneous. Dkt. 12. The Court **AFFIRMS** the Commissioner's  
17 final decision and **DISMISSES** the case with prejudice.

18 **BACKGROUND**

19 Plaintiff is currently 49 years old, has a high school education and has worked as a  
20 bagger. Tr. 42, 55, 279. In April 2015, she applied for benefits, alleging disability as of February  
21 2014. Tr. 279, 286. After her applications were denied initially and on reconsideration, the ALJ  
22 conducted a hearing and, on May 12, 2017, issued a decision finding plaintiff not disabled. Tr.  
23

11-25. The Appeals Council denied plaintiff's request for review, making the ALJ's decision the Commissioner's final decision. Tr. 1.

### THE ALJ'S DECISION

Utilizing the five-step disability evaluation process,<sup>1</sup> the ALJ found that plaintiff had not engaged in substantial gainful activity since alleged onset date, she had the following severe impairments: multiple sclerosis (MS) and affective disorder, and these impairments did not meet or equal the requirements of a listed impairment.<sup>2</sup> Tr. 13. The ALJ found that plaintiff had the residual functional capacity to perform sedentary work with additional limitations. Tr. 15. The ALJ found that plaintiff could not perform her past relevant work but, as there are jobs that exist in significant numbers in the national economy that she can perform, plaintiff is not disabled. Tr. 23-25.

### DISCUSSION

#### A. Medical evidence

Plaintiff argues that the ALJ failed to properly evaluate the medical evidence. In general, the ALJ must give specific and legitimate reasons for rejecting a treating or examining doctor's opinion that is contradicted by another doctor, and clear and convincing reasons for rejecting a treating or examining doctor's uncontradicted opinion. *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1996).

##### 1. Mental health evidence

Plaintiff describes the findings from various mental health treatment notes, asserting that this evidence "shows that [plaintiff's] depression has been causing some significant mental

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<sup>1</sup> 20 C.F.R. §§ 404.1520, 416.920.

<sup>2</sup> 20 C.F.R. Part 404, Subpart P. Appendix 1.

1 functional limitations, and it provides objective evidentiary support for [plaintiff's] testimony  
2 about these limitations.” Dkt. 12 at 3. But merely pointing to the existence of evidence and  
3 asserting that it supports plaintiff’s testimony does not establish that the ALJ erred in evaluating  
4 the medical evidence. It is the province of the ALJ to evaluate and weigh the evidence, and the  
5 court may not reweigh the evidence or substitute its judgment for that of the Commissioner.  
6 *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). If the evidence is subject to more than  
7 one rational interpretation, the court must uphold Commissioner’s conclusion. *Id.* Plaintiff has  
8 not shown that the evidence she discusses undermines the ALJ’s interpretation of the evidence  
9 overall, or that the ALJ’s interpretation of the evidence was irrational. The mere existence of this  
10 evidence does not establish error in the ALJ’s decision.

11           2.       *Dr. May*

12           Gregory May, Psy.D., conducted an examination in June 2015 and diagnosed major  
13 depressive disorder, recurrent, mild, and cannabis use disorder, moderate, early remission. Tr.  
14 475-79. He conducted a mental status examination that he opined was “reflective of normal  
15 functioning and any errors made are considered minor.” Tr. 478. He opined that based on current  
16 psychological, cognitive, and emotional functioning, plaintiff was likely to be unsuccessful at  
17 employment at that time, but supported by sustained abstinence from marijuana and potential  
18 benefits of continued therapy, her prognosis of returning to sustained employment in three to  
19 nine months was good. *Id.* He believed she was most likely to be successful at entry-level  
20 positions where interpersonal interactions were not required or severely limited. *Id.*

21           The ALJ gave partial weight to this opinion. Tr. 22. The ALJ noted that Dr. May believed  
22 plaintiff would be able to return to work in three to nine months, which is less than the durational  
23 requirement for disability benefits. *Id.* The ALJ disagreed with the portion of Dr. May’s opinion

1 that plaintiff was unable to work in June 2015, but found his comments regarding her being best  
2 suited to entry-level work, which is consistent with performing simple, routine tasks, to have  
3 persuasive value. *Id.* And the ALJ found that the longitudinal mental health treatment notes from  
4 the same time period as this evaluation showed that plaintiff's social limitations were not as great  
5 as Dr. May believed them to be. *Id.*

6 Plaintiff argues that the fact that the ALJ disagreed with the opinion is not by itself a  
7 valid reason to reject it. Dkt. 12 at 4. The court agrees. The ALJ must do more than offer his  
8 conclusions; he must also explain why his interpretation, rather than the doctor's interpretation,  
9 is correct. *Orn v. Astrue*, 495 F.3d 625, 632 (9th Cir. 2007) (citing *Embrey v. Bowen*, 849 F.2d  
10 418, 421-22 (9th Cir. 1988)). The ALJ's conclusory statement that he disagreed with a portion of  
11 the opinion was not a valid reason to reject it. But this was not the only reason the ALJ gave for  
12 rejecting this portion of the opinion.

13 The ALJ also found that the opinion was inconsistent with the longitudinal treatment  
14 record from the same time period. Tr. 22. The ALJ found that treatment records from Columbia  
15 River Mental Health Services (CRMHS) from August 2014 through June 2016 did not  
16 objectively describe disturbances of mood, affect, or sensorium so severe as to preclude full time  
17 work activity. Tr. 21. The ALJ found that the overall record showed her interacting appropriately  
18 with treatment providers and examining clinicians and having visits with her son at a local  
19 shopping mall, which was evidence that she could tolerate interacting with others, and that her  
20 ability to engage in treatment at CRMHS and other social service agencies was persuasive  
21 evidence that she possessed the ability to perform simple, routine tasks. *Id.*

22 Plaintiff asserts that the treatment notes from CRMHS contain many clinical findings that  
23 are consistent with Dr. May's opinion and that the ALJ almost entirely failed to discuss these

1 findings. Dkt. 12 at 4. Plaintiff identifies treatment notes where providers noted mildly  
2 dysthymic mood, fatigue, mild agitation, and unkempt appearance. *Id.* at 2-3. But the ALJ  
3 discussed some of these very observations, and also identified treatment notes that found  
4 euthymic mood, reduced fatigue, calm and cooperative presentation, and adequate grooming. Tr.  
5 20-21. Plaintiff asks the court to find that the notes she identifies undermine the ALJ's  
6 assessment of the treatment notes as a whole. But this the court cannot do. The ALJ considered  
7 the longitudinal treatment record from CRMHS and interpreted it in a rational manner, finding it  
8 inconsistent with Dr. May's opinion that plaintiff was unable to work in June 2015. An ALJ may  
9 give less weight to an opinion that is inconsistent with other evidence in the record. *Batson v.*  
10 *Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004). The ALJ's finding that Dr.  
11 May's opinion that plaintiff was unable to work in June 2015 was inconsistent with the  
12 contemporaneous treatment records was a valid reason to reject that portion of the opinion.

13 Because the ALJ gave a specific and legitimate reason to reject Dr. May's opinion that  
14 plaintiff was unable to work in June 2015, the court upholds the ALJ's assessment of the  
15 opinion.

16 3. *Physical health evidence*

17 As with the evidence related to her mental health treatment, plaintiff describes the  
18 findings from various treatment notes pertaining to her physical health and asserts that this  
19 evidence "shows that [plaintiff's] multiple sclerosis has been causing some significant functional  
20 limitations, including fatigue, and provides objective evidentiary support for [plaintiff's]  
21 testimony about her physical limitations, including fatigue." Dkt. 12 at 4-5. But, again, the mere  
22 existence of this evidence does not establish error in the ALJ's decision. Plaintiff's recitation of  
23 this evidence does not establish error in the ALJ's decision.

1           4.       *Dr. Leinenbach*

2           Derek Leinenbach, M.D., examined plaintiff in June 2015 and diagnosed multiple  
3 sclerosis by history and hypothyroidism. Tr. 485-88. He described her physical examination as  
4 normal. Tr. 487. He opined that she had no exertional, postural, manipulative, environmental, or  
5 other limitations. Tr. 488.

6           The ALJ gave Dr. Leinenbach's opinion limited weight, finding that the longitudinal  
7 record showed that plaintiff's limitations were greater than Dr. Leinenbach opined. Tr. 22. The  
8 ALJ found, however, that Dr. Leinenbach's objective observations of plaintiff's performance  
9 during the examination were further persuasive evidence that plaintiff did not have a disabling  
10 physical impairment. *Id.*

11          Plaintiff asserts that the ALJ's analysis of this opinion is contradictory, arguing that if the  
12 opinion is indeed inconsistent with the longitudinal medical evidence, it should be entitled to  
13 little if any weight. Tr. 5. It is unclear what outcome plaintiff seeks by challenging the ALJ's  
14 assessment of this opinion. The ALJ gave the opinion limited weight, making plaintiff's  
15 argument that the opinion is entitled to little or no weight in line with the actual outcome. And  
16 the ALJ's finding that Dr. Leinenbach's objective observations add to the weight of the evidence  
17 that plaintiff does not have a disabling physical impairment is not erroneous, even where the ALJ  
18 has rejected the doctor's assessment of those objective observations. The court will not disturb  
19 the ALJ's assessment of Dr. Leinenbach's opinion.

20          5.       *Non-examining physicians*

21          State-agency consultant John Gilbert, Ph.D., opined in June 2015 that plaintiff was  
22 moderately limited in the ability to carry out detailed instructions, perform activities within a  
23 schedule, maintain regular attendance, be punctual within customary tolerances, interact

1 appropriately with the general public, and respond appropriately to changes in the work setting;  
2 he opined that she was not significantly limited in other vocational areas. Tr. 171-72. Dr. Gilbert  
3 provided the following narrative assessment of plaintiff's concentration and persistence  
4 limitations: "Can carry out SRT [simple routine tasks] and most detailed tasks; may be  
5 inconsistent in CDT and attendance at times due to psych sx [symptoms] and subjective  
6 perception of pain, though is capable the majority of the time." Tr. 172. In October 2015, Diane  
7 Fligstein, Ph.D., agreed with Dr. Gilbert's assessment. Tr. 197-98. The ALJ found the opinions  
8 of Dr. Gilbert and Dr. Fligstein to be consistent with the record, and stated that the RFC finding  
9 incorporated cognitive and social limitations consistent with their assessments. Tr. 23.

10 Plaintiff argues that the RFC finding does not account for these doctors' opinion that  
11 plaintiff may have inconsistent attendance at times due to her psychiatric symptoms and her  
12 perception of pain. Dkt. 12 at 6. Plaintiff characterizes this opinion as showing that as much as  
13 49% of the time, plaintiff's attendance may be inconsistent, and asserts that the ALJ improperly  
14 failed to include this limitation without explanation. *Id.*

15 This opinion is vague and does not provide any precise limitations that the ALJ should  
16 have included in the RFC finding. It is unclear what the doctors mean by "inconsistent"  
17 attendance, how often "at times" means, and, as something that "may" happen, whether or not  
18 this will even occur. Plaintiff asserts that the ALJ should have adopted the most extreme  
19 interpretation possible of this ambiguous opinion. But the ALJ was not required to interpret this  
20 vague opinion in the manner proposed by plaintiff. The ALJ accounted for the moderate  
21 limitations in concentration and persistence opined by these doctors. The court finds no basis to  
22 disturb the ALJ's assessment of these opinions.

1           6.       *Medical expert testimony*

2           Donald Blackman, M.D., provided medical expert testimony at the hearing. The first  
3 witness to testify at the hearing, he testified that although plaintiff's multiple sclerosis did not  
4 meet or equal the listing, it would impose some restrictions. Tr. 37. He opined that plaintiff  
5 would be limited to two hours standing and walking in an eight-hour workday, that lifting and  
6 carrying should be limited to 10 pounds occasionally and 5 pounds frequently, and her use of  
7 ladders, ramps, and rough surfaces should be very occasional or none. Tr. 38. With respect to the  
8 issue of fatigue, Dr. Blackman noted that fatigue is difficult to evaluate, but it is very common in  
9 multiple sclerosis. Tr. 37-38. He opined that, as it appeared that plaintiff was able to handle her  
10 daily activities, he would not include a restriction related to stamina or being able to sustain  
11 activity for a steady period of time. Tr. 39.

12           The ALJ gave Dr. Blackman's opinion great weight, finding that Dr. Blackman was well  
13 qualified to offer an opinion as to plaintiff's condition, the medical evidence and treatment  
14 records strongly support Dr. Blackman's opinion, and his opinion was well reasoned and  
15 persuasive. Tr. 22.

16           Plaintiff argues that because Dr. Blackman testified before plaintiff did, he was unable to  
17 evaluate her testimony, including her testimony regarding her fatigue, and his opinion about the  
18 functional effects of her fatigue is therefore entitled to limited weight. Dkt. 12 at 7. She points to  
19 20 C.F.R. § 404.1527(c)(3), which provides that the weight given to the opinions of  
20 nonexamining sources depends on the degree to which they provide supporting explanations for  
21 their opinions, and that the ALJ will evaluate the degree to which these opinions consider all of  
22 the pertinent evidence.  
23

1 This regulation requires the ALJ to evaluate whether an opinion considered all of the  
2 evidence, not that an opinion is entitled to any particular weight based on the outcome of this  
3 evaluation. The ALJ found that Dr. Blackman’s opinion was well supported by the documentary  
4 evidence, finding that Dr. Blackman cited to specific evidence of record to support his opinion  
5 and described plaintiff’s response to prescribed treatment as evidenced by clinical observations  
6 and her subjective reports. Tr. 22. This was a valid reason to give the opinion great weight. *See*  
7 *Lester*, 81 F.3d at 830-31. The ALJ did not err by giving weight to the opinion despite the fact  
8 that Dr. Blackman did not consider plaintiff’s testimony.

9 **B. Plaintiff’s testimony**

10 Plaintiff argues that the ALJ failed to properly evaluate her testimony. The ALJ did not  
11 find that plaintiff was malingering and was thus required to provide clear and convincing reasons  
12 to reject her testimony. *See Vertigan v. Halter*, 260 F.3d 1044, 1049 (9th Cir. 2001). An ALJ  
13 does this by making specific findings supported by substantial evidence. “General findings are  
14 insufficient; rather, the ALJ must identify what testimony is not credible and what evidence  
15 undermines the claimant’s complaints.” *Lester*, 81 F.3 at 834.

16 Plaintiff first argues that the errors she alleged in the ALJ’s evaluation of the medical  
17 evidence taint the ALJ’s evaluation of plaintiff’s testimony. Dkt. 12 at 8. As the court has  
18 rejected plaintiff’s allegations of error with respect to the ALJ’s evaluation of the medical  
19 evidence, this argument fails.

20 Plaintiff next argues that the ALJ erred in relying on the differing reasons plaintiff gave  
21 for stopping work. Dkt. 12 at 8. The ALJ noted that in a statement plaintiff submitted to the  
22 Social Security Administration, she gave the following reason for stopping work on her alleged  
23 onset date: “Due to unforeseen medical symptoms and other circumstances I was unable to

1 complete my job assignment and resume without doctor authorizations.” Tr. 322. The ALJ  
2 found, however, that the record did not support this allegation, as there was no statement from  
3 any treatment provider excusing her from work. Tr. 16. The ALJ also noted that elsewhere in the  
4 record, plaintiff stated that in 2013, she lost a job she had held for seven years after she was  
5 arrested and jailed for 30 days, and could not be rehired at that job due to her criminal  
6 conviction. Tr. 477. Plaintiff also reported that in February 2015, she quit her part-time job after  
7 two weeks in order to supervise her son, explaining that “when her son is not at school he  
8 requires constant supervision, preventing her from being able to sustain employment.” *Id.* The  
9 ALJ found that it appeared that plaintiff did not stop working due to health issues but rather due  
10 to her express decision to take care of her son. Tr. 16. The ALJ stated that neither plaintiff’s  
11 criminal history nor her parental obligation is a basis for awarding disability benefits. *Id.*

12 Plaintiff argues that the reason she stopped working in 2013 is irrelevant, as she is not  
13 alleging disability since 2013. Dkt. 12 at 8. And she asserts that her criminal history and her  
14 parental obligation are irrelevant because she is not claiming she is disabled for these reasons  
15 and these are not the reasons she is unable to sustain full-time work. *Id.* But an ALJ can properly  
16 discount a claimant’s testimony in part due to fact that she left her job for reasons other than her  
17 alleged impairments. *Bruton v. Massanari*, 268 F.3d 824, 828 (9th Cir. 2001). Plaintiff’s  
18 statements about her inability to return to her long-term job because of a criminal conviction and  
19 stopping work because of her need to supervise her son contradict her claims that she stopped  
20 working due to disabling impairments. This was a valid reason to discount plaintiff’s testimony.

21 Plaintiff next argues that in finding that the medical record did not support plaintiff’s  
22 allegation of disability, the ALJ erred in two ways: first, because the ALJ cannot reject a  
23 claimant’s subjective testimony solely because objective evidence does not support it, and

1 second, because the ALJ selectively discussed the medical evidence, failing to consider evidence  
2 that she asserts support her testimony. Dkt. 12 at 8-9.

3 Plaintiff's first argument fails. Although an ALJ may not reject a claimant's testimony  
4 solely because it is unsupported by objective evidence, it is a relevant factor that the ALJ can  
5 consider in his credibility analysis. *Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005). Here,  
6 as discussed above, the ALJ gave other, valid reasons for rejecting plaintiff's testimony. The  
7 ALJ did not improperly rely on this reason only to reject plaintiff's testimony.

8 As to plaintiff's second argument, plaintiff repeats her argument from above that the ALJ  
9 ignored or failed to discuss clinical findings that support plaintiff's testimony. Dkt. 12 at 9. An  
10 ALJ must explain why "significant, probative evidence has been rejected," and must explain why  
11 uncontroverted medical evidence is rejected. *Vincent v. Heckler*, 739 F.2d 1393, 1395 (9th Cir.  
12 1984). However, while the ALJ must "make fairly detailed findings in support of administrative  
13 decisions to permit courts to review those decisions intelligently," the ALJ "need not discuss all  
14 evidence presented." *Id.* at 1394-95. Merely pointing to individual treatment notes the ALJ did  
15 not discuss does not establish error. The court finds that the ALJ did not err in evaluating the  
16 medical evidence or in finding that it did not fully support plaintiff's allegation of disability.

17 In sum, the court finds that the ALJ gave clear and convincing reasons, supported by  
18 substantial evidence, for discounting plaintiff's testimony. The court will not disturb the ALJ's  
19 assessment.

### 20 **C. RFC and step five finding**

21 Plaintiff concludes by arguing that the ALJ improperly formulated plaintiff's RFC and  
22 based his step five finding on this erroneous RFC assessment. Dkt. 12 at 12. However, plaintiff  
23 bases this argument on the assignments of error the court has rejected above. Because plaintiff

1 has not identified harmful error in the ALJ's assessment of the medical evidence or plaintiff's  
2 testimony, this argument fails. The court finds no error in the ALJ's RFC finding or finding of  
3 non-disability at step five.

4 **CONCLUSION**

5 For the foregoing reasons, the Commissioner's decision is **AFFIRMED** and this case is  
6 **DISMISSED** with prejudice.

7 DATED this 26th day of March, 2019.

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9 

10 BRIAN A. TSUCHIDA  
Chief United States Magistrate Judge